

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

FEB 27 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,

Respondent,

v.

PAUL MARCUS WALTERS,

Petitioner.

)
)
) 2 CA-CR 2006-0304-PR
) DEPARTMENT A
)

MEMORANDUM DECISION

) Not for Publication
) Rule 111, Rules of
) the Supreme Court
)
)

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20023589

Honorable John E. Davis, Judge

REVIEW GRANTED; RELIEF DENIED

Paul M. Walters

Buckeye
In Propria Persona

H O W A R D, Presiding Judge.

¶1 Petitioner Paul Walters was convicted after a jury trial of theft of a means of transportation, third-degree burglary, and possession of burglary tools. He was sentenced to presumptive, concurrent terms of imprisonment on all counts, the longest of which was 11.25 years for theft of a means of transportation. He appealed his convictions, arguing he had been entitled to a *Willits*¹ instruction and the evidence was insufficient to support his conviction for possession of burglary tools. *State v. Walters*, No. 2 CA-CR 2003-0219

¹*State v. Willits*, 96 Ariz. 184, 393 P.2d 274 (1964).

(memorandum decision filed June 17, 2004). We affirmed. *Id.* Walters has filed this petition for review following the trial court's denial of his request for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S.

¶2 The trial court appointed counsel to represent Walters in the post-conviction relief proceeding, but counsel filed a notice stating she had found no colorable claim to raise. The trial court then permitted Walters additional time in which to file a pro se petition for post-conviction relief. When Walters failed to file a petition, the trial court dismissed the proceeding. However, when Walters subsequently filed a second notice of post-conviction relief in which he stated reasons for his previous failure to file a timely petition, the trial court allowed Walters additional time to proceed. In the petition that followed, Walters reasserted the issues concerning the *Willits* instruction and possession of burglary tools conviction he had raised on appeal and further claimed his trial counsel had rendered ineffective assistance and his right to a jury trial under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), had been violated.

¶3 The trial court properly found the first of these claims precluded. Walters's assertion that he had been erroneously denied a *Willits* instruction had been adjudicated on the merits on appeal, and to the extent Walters had raised any new but related claims, they were waived by his failure to raise them on appeal. *See* Ariz. R. Crim. P. 32.2(a). The trial court also correctly found the absence of any *Blakely* violation; Walters had received only presumptive terms of imprisonment. *See State v. Johnson*, 210 Ariz. 438, ¶ 10, 111 P.3d 1038, 1041 (App. 2005).

¶4 Finally, the trial court found Walters had failed to show that counsel's performance had fallen below an objective standard of reasonableness and that, but for counsel's ineptitude, the outcome of his case would have been different, as required under *Strickland v. Washington*, 466 U.S. 668, 687-88, 691, 104 S. Ct. 2052, 2064-65, 2066-67 (1984). Specifically, Walters argued counsel had failed to call two witnesses on his behalf, whose testimony he claimed would have "prejudiced the state." As the trial court noted in its ruling, Walters neither supported these claims with any evidence nor specified what might have been the nature of the witnesses' testimony.

¶5 In his petition for review, Walters fails to establish the trial court abused its discretion in denying relief. *See State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986). Although he recasts the issues somewhat differently, he raises essentially the same issues as those he did below. We need not rehash the trial court's correct ruling disposing of those claims; instead, we adopt it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶6 We grant Walters' petition for review but deny relief.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

GARYE L. VÁSQUEZ, Judge